

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**CAPITAL ONE BANK (USA), N.A., and
CAPITAL ONE SERVICES, INC.,**

Plaintiffs,

v.

CIVIL ACTION NO. 2:08-CV-00165

DARRELL V. McGRAW, JR., in his official
capacity as West Virginia Attorney General,

Defendant.

**ATTORNEY GENERAL'S REPLY TO PLAINTIFFS'
RESPONSE TO DEFENDANT'S MOTION TO MODIFY
JUNE 26, 2008 ORDER OF THIS COURT**

On August 19, 2009, the State of West Virginia moved the Court to modify its June 26, 2008 injunction by dissolving the prohibition of the Attorney General's suing Capital One Bank (USA), N.A. to enforce non-preempted substantive state laws. On September 4, 2009, Capital One Bank and Capital One Services, Inc., filed their response to the motion. In that response, Plaintiffs state that they do not oppose the requested relief. Rather, they take the view that this Court's previous order does not bar the state from suing to enforce non-preempted substantive state laws.

Plaintiffs state that they oppose the motion "to the extent the Attorney General is arguing that the Order should be modified to allow the Attorney General to 'sue' to enforce the previously issued investigative subpoena. . ." (Response, at p. 4.) The Attorney General's motion does not seek any such relief. Therefore, based on the arguments set forth in the original motion and memorandum, and the fact that the Plaintiffs do not oppose the motion, the Attorney General requests this Court enter an order granting the relief sought.

RESPECTFULLY SUBMITTED,

DARRELL V. McGRAW, JR.
in his official capacity as the Attorney General
for the State of West Virginia

By counsel

s/ FRANCES A. HUGHES

Frances Hughes Bar Number: 1816
CHIEF DEPUTY ATTORNEY GENERAL
State Capitol Complex
Building 1, Room W-435
Charleston, WV 25305
Telephone: 304-558-2021

s/CHARLI FULTON

Charli Fulton Bar Number: 1314
SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection Division
Post Office Box 1789
Charleston, West Virginia 25326-1789
Telephone: 304-558-8986
Facsimile: 304-558-0184

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CERTIFICATE OF SERVICE

I, Charli Fulton, Sr. Assistant Attorney General, Consumer Protection/Antitrust Division, do hereby certify that a true and accurate copy of the foregoing **ATTORNEY GENERAL'S REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO MODIFY JUNE 26, 2008 ORDER OF THIS COURT**, was served upon the Plaintiffs by electronic transmission, this 14th day of September, 2009 as follows:

Niall A. Paul, WV Bar No. 5622
Bruce M. Jacobs, WV Bar No. 6333
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Charleston, West Virginia 25301

and by serving a copy by United States First Class Mail this 14th day of September, 2009 as follows:

James R. McGuire (Visiting Attorney)
Rata F. Lin (Visiting Attorney)
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

/s/ Charli Fulton
State Bar No. 1314
Senior Assistant Attorney General
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, West Virginia 25326-1789